



1995

Due Process

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Recommended Citation

(1995) "Due Process," *Touro Law Review*: Vol. 11 : No. 3 , Article 23.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol11/iss3/23>

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With that sentence the Court indicated that the patients were enjoying an indirect benefit and thus their “constitutionally protected interest in life, liberty, or property” was not directly affected.³³⁹

In comparing federal decisions such as *Barchi* and *O’Bannon* to state decisions like *Augat*, *Saumell*, and *Sedutto*, there is agreement, whether outright or implicit, on the issue of constitutional rights and how those rights are treated under cases where license revocation is involved. The United States Supreme Court and the New York courts are consistent in that both require that one must have an interest, such as petitioner’s job, at stake. Once it is determined that an interest is at stake, the safeguards of due process protect against the deprivation of that interest. Situations exist where a state interest may supersede certain procedural rights, as in *Barchi*. Furthermore, although rights may appear to exist in certain situations, these rights may not exist, as in *O’Bannon*, because they are misinterpreted. The *Augat* court, perhaps fortunately, did not encounter such complexities. If it had, surely Supreme Court precedents would have been applied.

Finally, the recognition of due process rights and one’s liberty interest in holding a license appears to be applied consistently, in federal courts dealing with Medicare and gambling issues and in New York courts when dealing with jockeys, boiler engineers, and administrators. Of course, the general rules applied in *Augat* are subject to exceptions based upon the specific language of the statutory licensing provisions.

NEW YORK COUNTY

Campo-v. New York City Employees’ Retirement System³⁴⁰
(printed April 26, 1994)

The plaintiff, Mrs. Campo, brought her due process claim into New York State court³⁴¹ following the dismissal³⁴² and

339. *Id.* at 790.

340. N.Y. L.J., Apr. 27, 1994, at 22 (Sup. Ct. New York County 1994).

subsequent affirmation of her federal procedural due process claim.³⁴³ In state court, she again alleged, *inter alia*, that she had been deprived of property, her husband's survivor benefits without a hearing and, therefore, her due process rights had been violated under article I, section 6, of the New York State Constitution.³⁴⁴ Similarly, her federal claim alleged the identical violation under the Fourteenth Amendment of the United States Constitution.³⁴⁵

In its decision on the cross motions for summary judgment submitted by the parties, the state court granted the motion by the defendant, New York City Employees' Retirement System [hereinafter NYCERS], and dismissed plaintiff's motion³⁴⁶ partly on an analysis based on federal decisions.³⁴⁷ Although the court noted that the plaintiff's complaint was time barred under the statute of limitations for bringing article 78³⁴⁸ hearings,³⁴⁹ it

341. *Id.*

342. *Campo v. New York City Employees' Retirement Sys.*, 653 F. Supp. 895 (S.D.N.Y. 1987), *cert. denied*, 488 U.S. 889 (1988) [hereinafter referred to as *Campo I*].

343. *Campo v. New York City Employees' Retirement Sys.*, 843 F.2d 96 (2d Cir. 1988) [hereinafter referred to as *Campo II*].

344. N.Y. CONST. art. I, § 6. The provision states in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

345. U.S. CONST. amend. XIV, § 1. The provision states in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ." *Id.*

346. *Campo*, N.Y. L.J., Apr. 27, 1994, at 22.

347. *Id.*

348. N.Y. CIV. PRAC. L. & R. § 7803 (McKinney 1994). The provision states:

The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed

considered, among other issues,³⁵⁰ Mrs. Campo's due process claim. The court stated that "[j]ust as the availability of article 78 relief satisfies the due process requirements under the fourteenth amendment of the United States Constitution (assuming that plaintiff has a protected property right) . . . so it satisfies the due process requirements under the New York State Constitution."³⁵¹

The court then cited *Economico v. Village of Pelham*.³⁵² The court held that the defendant's "alleged failure to provide a hearing [was] itself properly challenged in an article 78 proceeding."³⁵³ *Economico*, however, was abrogated by *Prue v. Hunt*.³⁵⁴ In *Economico*, the court held that a police officer claiming disability from a non-service related accident could be dismissed from employment, pursuant to the Civil Service Law, without a pre-termination hearing.³⁵⁵ In opposition, the court in *Prue* held to the contrary on the same issue.³⁵⁶

Id.

349. N.Y. CIV. PRAC. L. & R. § 217 (McKinney 1990 & Supp. 1994). The section provides:

1. Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within *four months* after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty

Id. (emphasis added).

350. *Campo*, N.Y. L.J., Apr. 27, 1994, at 22. The plaintiff, in addition to her due process claim, also asserted a contractual claim. The court held that plaintiff was not a third party beneficiary for purposes of breach of contract and that no contractual relationship existed under which to bring her claim.

Id.

351. *Id.*

352. 50 N.Y.2d 120, 405 N.E.2d 694, 428 N.Y.S.2d 213 (1980).

353. *Campo*, N.Y. L.J., Apr. 27, 1994, at 22.

354. 78 N.Y.2d 364, 581 N.E.2d 1052, 575 N.Y.S.2d 806 (1991). In *Prue*, the court stated that a police officer had a right to a hearing prior to dismissal in addition to the post-termination procedures required by New York Civil Service Law § 73. *Id.*

355. *Economico*, 50 N.Y.2d at 124, 405 N.E.2d at 696, 428 N.Y.S.2d at 215.

356. *Prue*, 78 N.Y.2d at 369, 581 N.E.2d at 1054, 575 N.Y.S.2d at 808. The *Prue* court relied on *Cleveland Board of Education v. Loudermill*, 470

The plaintiff, Mrs. Campo, sought survivor's benefits from the defendant, a city agency responsible for city employee pension plans,³⁵⁷ claiming she was due benefits from her deceased husband's retirement plan.³⁵⁸ According to the defendant agency, Mr. Campo, a former New York City Sanitation Department employee, had opted, by default, for a pension plan that offered higher lifetime benefits, but no survivor benefits.³⁵⁹ Mrs. Campo claimed, however, that her husband had returned a pension application by certified mail specifying an option with lower lifetime benefits which included survivor benefits.³⁶⁰

Mr. Campo had received higher lifetime payments for three years prior to his death in 1984.³⁶¹ Thereafter, Mrs. Campo visited the defendant's offices and was informed that her husband had opted for the plan with no survivor benefits, by his default, following the defendant's letter to him informing him of the default option.³⁶² Mrs. Campo contended that her husband had not received this letter and had in fact mailed back the defendant's pension application specifying a plan with survivor benefits.³⁶³ However, the plaintiff was unable to produce the receipt from this mailing.

Mrs. Campo then brought a procedural due process action under section 1983,³⁶⁴ in federal district court claiming that the

U.S. 532 (1984), which stands for the proposition that under due process, an individual has the right to notice and a "pretermination" opportunity to respond.

357. *Campo*, N.Y. L.J., Apr. 27, 1994, at 22.

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.* The court cited the defendant's rule on default in a footnote which stated: NYCERS Rule 30(c) provides as follows:

A retiree shall be deemed retired under the retirement allowance without optional modification (maximum) unless he or she elects an Option within 60 days from the date of the letter setting forth the amounts payable to him or her under the various Options or the option he or she specifies.

Id. at 22 n.5.

363. *Id.*

364. 42 U.S.C. § 1983 (1988). The statute provides:

defendant violated her Fourteenth Amendment due process rights by depriving her of property rights in the pension plan survivor's benefits.³⁶⁵ The district court granted the defendant's motion to dismiss because, among other things, the availability of an article 78 hearing provided adequate due process, and this decision was affirmed on appeal.³⁶⁶ Mrs. Campo then brought suit in New York State court arguing that the defendant violated her due process rights. Thereafter, the defendant's motion for summary judgment was granted.³⁶⁷

The United States District Court for the Southern District of New York concluded that an informal review of Mrs. Campo's claim, by the defendant agency, and the availability of an article 78 proceeding, had provided her with constitutional due process.³⁶⁸ The Second Circuit affirmed the lower court decision holding that Mrs. Campo was provided a due process hearing through article 78 and that, as noted in the district court decision, she could also bring a breach of contract claim against the defendant in state court, which would satisfy procedural due process.³⁶⁹

However, the state court, while discussing Mrs. Campo's constitutional claim, noted that the time limit for bringing an article 78 claim had expired, and that Mrs. Campo's breach of contract claim failed on its merits.³⁷⁰

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Id.

365. *Campo I*, 653 F. Supp. at 897.

366. *Campo II*, 843 F.2d at 100.

367. *Campo*, N.Y. L.J., Apr. 27, 1994, at 22.

368. *Campo II*, 843 F.2d at 99 (summarizing the district court's holding in *Campo I*).

369. *Id.* at 99, 102-03. The statute of limitations for breach of contract is six years, pursuant to CPLR § 213. N.Y. CIV. PRAC. L. & R. § 213 (McKinney 1990 & Supp. 1994).

370. *Campo*, N.Y. L.J., Apr. 27, 1994, at 22.

Comparatively, the state court found no difference between state and federal law on the issue of the plaintiff's procedural due process right to a hearing and deferred to the federal analysis on the matter.³⁷¹ *Campo I*, to which the state court referred, detailed the *Mathews v. Eldridge*³⁷² "three-prong test for determining the constitutional sufficiency of administrative procedures."³⁷³ *Campo II*, which it also cited, pertained to article 78 of New York Civil Procedure Law and Rules and the *Solnick v. Whalen*³⁷⁴ decision by the New York Court of Appeals. In *Solnick*, the court held, among other things, that article 78 proceedings are subject to a four-month statute of limitations in which a party can institute a proceeding.³⁷⁵

In *Campo I*, the district court granted defendant's motion for summary judgment.³⁷⁶ In reaching its conclusion, the court applied the *Mathews* three prong test, which requires a court to consider the private interest affected by the action; the risk of erroneous deprivation of that interest by the procedures to be used, as well as the value of any substitute or additional procedural safeguards; and the government's interest in the substitute or additional procedural requirements, in terms of the function involved and administrative and fiscal burdens.³⁷⁷

371. *Id.* (citing *Campo I*, 653 F. Supp. at 899-900 and *Campo II*, 843 F.2d at 101-02).

372. 424 U.S. 319, 335 (1976) (holding that individuals being deprived of a property interest are entitled to a preliminary hearing of some form, and that the availability of an administrative hearing satisfied due process requirements for termination of disability benefits).

373. *Campo I*, 653 F. Supp. at 898-99.

374. 49 N.Y.2d 224, 401 N.E.2d 190, 425 N.Y.S.2d 68 (1980). Owner-operators of nursing homes claimed they had been deprived of due process when the state sought to recover Medicaid overpayments on a retroactive basis. The operators sought to enjoin the state's plan, however, the court held that an article 78 hearing was the appropriate form of judicial proceeding for reviewing the state's recovery plan, and that plaintiffs' complaint was thus time barred by the four-month statute of limitations in which to bring an article 78 proceeding. *Id.* at 228, 401 N.E.2d at 193, 425 N.Y.S.2d at 71.

375. *Id.* at 233, 401 N.E.2d at 196, 425 N.Y.S.2d at 73-74. The limitation is imposed by N.Y. CIV. PRAC. L. & R. § 217.

376. *Campo I*, 653 F. Supp. at 900.

377. *Id.* at 899 (citing *Mathews*, 424 U.S. at 335).

The district court noted that under the first prong, no “pre-deprivation” hearing was required because “survivor’s benefits [] do not necessarily implicate ‘the very means by which to live.’”³⁷⁸ Under the second prong, the court stated that not every situation requires a “trial-type hearing” and that “the probable value of such an administrative hearing is minimal since it [was] unlikely to unearth information” that had not already been received by the defendant for consideration.³⁷⁹ Under the third prong, the court balanced the plaintiff’s interest in survivor benefits against the defendant’s burden of providing “an administrative hearing to anyone challenging the terms of [the defendant’s] retirement option plan.”³⁸⁰ The court determined that the defendant’s burden was overwhelming since allowing such hearings to any dissatisfied beneficiary might deplete the government of moneys used to pay those benefits.³⁸¹

In holding for the defendant agency, the district court noted that article 78 proceedings are available to claimants who challenge administrative procedures.³⁸² The circuit court also cited article 78 and *Solnick*, noting that such proceedings afforded the appropriate avenue for the relief sought by Mrs. Campo.³⁸³ The plaintiff had argued that article 78 was an inadequate remedy because she carried the burden of “overcoming a presumption of administrative regularity.”³⁸⁴ She claimed that since such a proceeding confined itself to the issue of whether her denial of survivor’s benefits was “arbitrary or capricious,” it failed to provide a means for assessing the strength of her testimony.³⁸⁵ However, the court stated that in an article

378. *Id.* (citing *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970)). *Goldberg* holds that the termination of welfare benefits requires a pretermination hearing because the effect of terminating welfare benefits immediately impacts an ineligible recipient, and thus adversely affects that individual’s means of seeking redress.

379. *Id.* at 899.

380. *Id.*

381. *Id.*

382. *Id.*

383. *Campo II*, 843 F.2d at 101.

384. *Id.*

385. *Id.*

78 proceeding, the court has authority to remand and order an agency to conduct a proper hearing if the record before it “demonstrates a[n] [arbitrary or capricious] lack of appropriate procedure” by the defendant agency.³⁸⁶

Citing *Liotta v. Rent Guidelines Board*³⁸⁷ the court noted that:

Plaintiffs cannot manufacture a [section] 1983 claim by pointing to the allegedly defective meeting while ignoring that part of the regulatory process that serves to redress administrative error. Rather, in considering whether defendants have failed to afford plaintiffs due process . . . the Court evaluates the entire procedure, including the adequacy and availability of remedies under state law.³⁸⁸

In conclusion, the federal and New York State courts uniformly hold that the availability of article 78 proceedings sufficiently protect the property interests of individuals claiming pension plan survivor’s benefits, satisfying procedural due process requirements under the Fourteenth Amendment of the United States Constitution, and article I, section 6 of the New York State Constitution. Following the above reasoning, the court granted the defendant’s motion for summary judgment.

*New Amber Auto Service v. New York City Environmental
Control Board*³⁸⁹
(decided November 9, 1994)

Plaintiffs, New Amber Auto Service and Spin Holdings Inc., claimed that both an administrative code provision³⁹⁰ and an environmental control regulation,³⁹¹ which they were charged

386. *Id.*

387. 547 F. Supp. 800, 802 (S.D.N.Y. 1982). In *Liotta*, tenants sued the defendant city’s rent guidelines board to enjoin a rent increase that had been decided during a meeting, described as so “unruly” as to deprive them of property without due process. The court granted defendant’s motion for summary judgment holding that the availability of Article 78 proceedings was an appropriate remedy, which plaintiffs had failed to utilize timely. *Id.* at 803-04.

388. *Campo II*, 843 F.2d at 102.